

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JANETTE VOMUND,)	
)	
Plaintiff,)	8:08CV76
)	
v.)	
)	
SIGNOR TRUCKING, Inc., and MARK)	MEMORANDUM AND ORDER
M. STRATHMAN,)	
)	
Defendants.)	
_____)	

This matter is before the court on defendants' Motion to Dismiss, [Filing No. 10](#). This wrongful death action was filed by Janette Vomund, the natural surviving mother of the deceased Jared Martin. At the time the lawsuit was filed, Vomund had not been named as personal representative of Jared Martin's estate. After the filing of the motion to dismiss, Vomund stated to this court that a probate action has been opened in Callaway County, Missouri, where Jared Martin was a resident at the time of his death.

Because "[e]very such action, as prescribed in Section 30-809 [wrongful death], . . . shall be brought by and in the name of the person's Personal Representative for the exclusive benefit . . . and next of kin," [Spradlin v. Dairyland Ins. Co., 641 N.W.2d 634, 637 \(Neb. 2002\)](#), the court will grant the plaintiff additional time in which to be appointed as the personal representative of Jared Martin. The plaintiff shall file within ten (10) days of this order a status report regarding the Callaway County, Missouri, probate action and the expected time frame for the naming of a personal representative. Further, plaintiff will notify this court as soon as a personal representative is named.

IT IS ORDERED:

1. Defendants Signor Trucking, Inc. and Mark M. Strathman's Motion to Dismiss, Filing No. 10, is denied, subject to reassertion if Janette Vomund is not named as the personal representative of Jared Martin's estate in the Callaway County, Missouri, probate action.

2. The court will grant plaintiff Janette Vomund additional time in which to be appointed as the personal representative of Jared Martin.

3. Plaintiff Janette Vomund shall file within ten (10) days of this order a status report regarding the Callaway County, Missouri, probate action and the expected time frame for the naming of a personal representative, and shall notify this court as soon as a personal representative is named.

DATED this 21st day of May, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge